

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**TENTH STREET BUILDING
CORPORATION,
Plaintiff**

V.

CIVIL ACTION NO. 03-359 Erie

**BP PRODUCTS NORTH AMERICA
INC., f/k/a and successor to BP OIL
COMPANY, f/k/a and successor to
BORON OIL COMPANY, and
DONALD
TRAPP,
Defendants**

JUDGE COHILL

MOTION FOR RECONSIDERATION

Defendant, Donald Trapp, by his attorney, Thomas A. Testi, Esquire, hereby files this Motion for Reconsideration of this Honorable Court's Order dated September 7, 2005 which granted a Joint Motion to Lift Stay filed by Tenth Street Building Corporation, Plaintiff, and BP Products North America, Inc. f/k/a and successor to BP Oil Company, f/k/a and successor to Boron Oil Company, Defendant following this Honorable Court's issuance of its Order dated September 1, 2005, for the reasons set forth hereafter:

1. As this Honorable Court is well aware, pursuant to the terms of the Court's September 1, 2005 Order, the parties to this matter were given until September 9, 2005 to file written responses to the Court's September 1, 2005 Order.

2. In accordance with the terms of this Honorable Court's Order dated February 28, 2005, this case should have been dismissed as of September 1, 2005.

3. As the Court is aware, the "parties" to this case are Tenth Street Building Corporation, BP Products North America, Inc., f/k/a and successor to BP Oil Company, f/k/a and successor to Boron Oil Company, and Donald Trapp.

4. The Court's Order dated September 1, 2005 stated that any party wishing to lift the stay could do so by setting forth their reasons in a motion to lift the stay filed with the Court no later than September 9, 2005, or, in the alternative, that the parties shall, prior to September 9, 2005, file a stipulation for dismissal of the action, and, that if the parties do not move to lift the stay or file a stipulation for dismissal by September 9, 2005, that the action would be dismissed.

5. The Defendant, Donald Trapp, was not invited to join in with the Joint Motion that was filed by Plaintiff and Defendant BP and in the alternative prepared a Motion and Brief in Support of Dismissal of the litigation.

6. This Honorable Court was probably not aware that Defendant Donald Trapp had not been advised of the Joint Motion that was filed by Plaintiff and by Defendant BP prior to the filing of such.

7. The Defendant Donald Trapp believed that the Court's Order of September 1, 2005 would allow him to file his response to the Court's Order by September 9, 2005.

8. On this the 9th day of September, 2005, the Defendant Donald Trapp received the Court's Order dated September 7, 2005 granting the joint motion filed by Plaintiff and Defendant BP.

9. The Defendant Donald Trapp has interests that are different than those of Defendant BP and therefore respectfully asks that this Honorable Court Reconsider its Order of September 7th, 2005 and that Defendant Donald Trapp's Motion for Dismissal be considered and acted upon by the Court since that Motion has been filed "no later than September 9, 2005" and should therefore be considered by the Court.

NOW THEREFORE, Defendant Donald Trapp respectfully asks that this Honorable Court reconsider its Order dated September 7, 2005 and that the Court dismiss the Plaintiff's suit at this time.

Respectfully submitted,

By: 

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